

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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ROBERT FRIEDMAN,

Plaintiff,

-against-

LANCE WINSLOW, JOANNE ABRAMS and CONEY :
ISLAND HOSPITAL, :

Defendants. :
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MEMORANDUM &
ORDER

No. 23-CV-4324-EK-JRC

JAMES R. CHO, United States Magistrate Judge:

On February 5, 2024, the Honorable Eric R. Komitee referred *pro se* and *in forma pauperis* plaintiff Robert Friedman’s motion for default judgment against defendant Joanne Abrams to the undersigned. *See* Dkt. 27. Since entry of judgment by default pursuant to Rule 55(b) of the Federal Rules of Civil Procedure first requires the entry of a default pursuant to Rule 55(a), this Court treat’s plaintiff’s application as one for entry of default. *See City of New York v. Mickalis Pawn Shop, LLC*, 645 F.3d 114, 128 (2d Cir. 2011); *see also* Local Civ. R. 55.2 (requiring that a party seeking default judgment must demonstrate that Clerk has entered default).

By Order dated June 14, 2023, this Court granted plaintiff’s request that the U.S. Marshals Service effect service of process on defendants. *See* Dkt. 4. The Process Receipt and Return filed by the U.S. Marshals Service regarding defendant Joanne Abrams indicates that a waiver of service was mailed to Abrams’ “usual place of abode.” *See* Dkt. 26. However, it appears that the waiver was sent to the location of St. Vincent’s Behavioral Health Center. *See* Dkt. 28. In any event, defendant Abrams did not return the acknowledgment of service.

Therefore, it appears that defendant Joanne Abrams was not properly served with process

by mail pursuant to N.Y. C.P.L.R. § 312-a, nor was the mailing of a request for waiver of service effective pursuant to Rule 4(d) of the Federal Rules of Civil Procedure. *See Elderkin v. Romeo*, No. 20-CV-1043, 2021 WL 12157894, at *2 (N.D.N.Y. Feb. 8, 2021); *Bell v. Gray*, No. 20-CV-1588, 2021 WL 242787, at *1-*2 (S.D.N.Y. Jan. 25, 2021). Accordingly, plaintiff's application for entry of default is denied. The U.S. Marshals Service is directed to personally serve the summons and complaint upon Joanne Abrams within 14 days and to file a return or other acknowledgement with this Court. The Clerk's Office is directed to re-issue a summons for defendant Abrams and deliver all documents necessary to effect personal service on defendant Abrams to the U.S. Marshals Service.

SO ORDERED

Dated: Brooklyn, New York
July 22, 2024

s/ James R. Cho
JAMES R. CHO
United States Magistrate Judge